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COMMONWEALTH OF VIRGINIA

STATE CORPORATION COMMISSION

AT RICHMOND, JULY 26, 2002

APPLICATION OF

VIRGINIA ELECTRIC AND POWER COMPANY

CASE NO. PUE-2002-00377

To revise its fuel factor

Pursuant to Va. Code § 56-249.6

**ORDER ON MOTION FOR PROTECTIVE ORDER**

On July 18, 2002, the Commission entered an Order ("July 18, 2002, Order") establishing a procedural schedule for the purpose of addressing the July 1, 2002, motion of Virginia Electric and Power Company ("Virginia Power" or "Company") requesting a protective order governing the treatment of confidential information in this proceeding.

The July 18, 2002, Order required, *inter alia*, that the Commission Staff ("Staff") and interested parties file responses concerning the Company's motion with the Clerk of the Commission, and contemporaneously serve copies of such responses on counsel for the Company not later than Tuesday, July 23, 2002. The Company was afforded an opportunity to file a reply to such responses not later than Wednesday, July 24, 2002.

Responses to the Company's motion were filed by the Staff and by the Virginia Committee For Fair Utility Rates ("Committee") on July 23, 2002. The Company filed a reply on July 24, 2002. The Committee stated in its response that it had no objection to the Company's proposed protective order attached to the Company's July 1, 2002, motion.

The Staff's response noted that the Company's proposed order is modeled after a similar protective order entered by the Commission in the Company's recent functional separation case.<sup>1</sup> The response further stated that the Staff and the Company had entered into an agreement concerning the treatment of confidential treatment in the Company's 2001 fuel factor proceeding.<sup>2</sup> As part of that agreement, the Company and Staff had stipulated to the definition of "confidential information." It was also the Staff's view, as expressed in its response, that the definition developed as part of that case would be invaluable in this proceeding.

Thus, the Staff recommended that the Commission adopt the protective order proposed by the Company in its July 1, 2002, motion, with modifications proposed by Staff designed to (i) incorporate the definition of "confidential information" agreed to by the Company and Staff during the Company's 2001 fuel factor proceeding (with certain modifications suggested to update or amplify that definition), and (ii) make several technical modifications to the Company's proposed order. The Company's July 24, 2002, reply indicated that the Company had no objection to entry of the protective order as proposed by the Staff.

NOW the Commission, in consideration of the foregoing, is of the opinion and finds that the Company's motion for a protective order should be granted, and the protective order proposed by the Company approved with the addition of modifications thereto proposed by the Staff.

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<sup>1</sup> Commonwealth of Virginia, ex. rel. State Corporation Commission, Application of Virginia Electric and Power Company, For approval of a Functional Separation Plan under the Virginia Electric Utility Restructuring Act, Case No. PUE-2000-00584. Order Granting Confidential Treatment entered in that docket by the Commission on June 6, 2001.

<sup>2</sup> Commonwealth of Virginia, ex. rel. State Corporation Commission, Application of Virginia Electric and Power Company, To revise its fuel factor pursuant to § 56-249.6 of the Code of Virginia, Case No. PUE-2000-00585.

ACCORDINGLY, IT IS HEREBY ORDERED THAT:

(1) Any documents, materials, and information to be filed with the Commission or produced by any party in this proceeding to the Commission Staff ("Staff") or another party, that the producing party designates and clearly marks as "Confidential Information" shall be filed, produced, examined and used only in accordance with the conditions set forth below.

Information that is available to the public anywhere else will not be granted confidential treatment and shall not be designated as "Confidential Information" by any party.

(2) For purposes of this Order, "Confidential Information" is defined as the following information prepared and/or produced for the purpose of the 2003 Fuel Factor Proceeding:

(a) All unit-specific and contract-specific monthly forecast data, for the forecast period and for the final months of the prior period, that relates to the determination of the fuel factor, whether contained in the application, supporting testimony, and accompanying exhibits (collectively, the "Application") or in the Fuel Monitoring System ("FMS") forecast data filed with the Application, or produced in response to Commission orders or regulations.

(b) Specific dates of planned outages.

(c) Reports displaying FMS monthly forecast data filed in support of the Application. Reports displaying FMS monthly forecast data filed with the Application will become open to the public after the close of the referenced month at the same time the "actual" monthly FMS report for that referenced month is filed with the Commission. Dominion Virginia Power shall continue to file monthly reports of actual fuel data required by Va. Code §56-249.3, within the forty-five (45) day period specified by Va. Code §56-249.4.

(d) Contract-specific information related to fuel contracts or purchased power contracts; and transaction-specific information related to off-system sales or other sales or purchases that Dominion Virginia Power is not otherwise required to publicly report, or customer-specific sales contracts that are confidential or that have not been made public.

(e) Sales or load forecasts for the 2002 - 2003 forecast period broken down by hour, day, customer class, customer, or geographic area;

Any nonpublic sales or load forecasts for any part of 2004 or later; and

Earnings or revenue projections for Virginia Power or its affiliates (other than Dominion Virginia Power's projected 2002 - 2003 fuel recovery or total off-system sales margins projected to be credited to the 2003 Fuel Factor).

(f) Any individual customer information, including but not limited to customer load profiles or usage history.

(g) Information that is confidential and/or proprietary to a third party, including but not limited to information that is confidential and/or proprietary to NewEnergy Associates and its affiliates, to the extent that the owner of such information does not require a separate agreement with the receiving party.

(h) Nothing in this definition, however, shall be deemed to prohibit a party from seeking confidential treatment, pursuant to Rule 5 VAC-5-20-170 of the Commission's Rules of Practice and Procedure, of information not otherwise identified as confidential in this definition.

(3) For information required to be filed with the Commission in this proceeding, parties shall clearly mark and file under seal with the Clerk of the Commission all information

considered by the party to be Confidential Information. Parties shall also file with the Commission a redacted version of such documents. If information that is requested pursuant to a discovery request in this proceeding is considered by the producing party to be Confidential Information, the producing party shall clearly mark the Confidential Information prior to its production.

(4) All Confidential Information filed or produced by a party to this proceeding shall be used solely for the purposes of this proceeding (including any appeals).

(5) Access to Confidential Information shall be provided and specifically limited to Staff and any party, their counsel and expert witnesses, and to support personnel working on this case under the supervision of said counsel or expert witnesses and to whom it is necessary that the Confidential Information be shown for the purposes of this proceeding, so long as each such person has executed an Agreement to Adhere to Protective Order ("Agreement"), which is Attachment A to this Order. Staff and Staff counsel are not required to sign the Agreement but are hereby ordered to preserve the confidentiality of the information. All Agreements shall be promptly forwarded to the producing party upon execution.

(6) Staff or any party may object to the confidential designation of particular information by filing a motion with the Commission. The Commission will conduct an in camera review of the challenged documents, materials, or information. The burden of proving that documents, materials, or information should be designated as confidential shall be upon the proponent of such treatment. In no event shall any party disclose the Confidential Information it has received subject to this Order absent a finding by the Commission that such information does not require confidential treatment.

(a) Within five (5) business days of the filing of the motion, the party seeking confidential treatment shall file a response. The response shall respond to each and every document and all information that is subject to the party's motion. The response shall:

(1) Describe each document and all information, such description to include the character and contents of each document and all information; (2) Explain in detail why the information requires confidential treatment; and (3) Describe and explain in detail all harms that might be suffered as a result of the failure of the document to be treated as confidential.

(b) Within ten (10) business days of the filing of the response, the party objecting to confidential treatment may file a reply.

(7) In the event that Staff or any party seeks permission to grant access to any Confidential Information to any person other than the persons authorized to receive such information under paragraph (5) above, the party desiring permission shall seek the consent of counsel for the producing party. In the event of a negative response, the party seeking disclosure permission may file a motion with the Commission for such permission and shall bear the burden of proving the necessity for such disclosure.

(8) The producing party shall be under no obligation to furnish Confidential Information to persons other than those authorized to receive such information under paragraph (5) above unless specifically ordered by the Commission to do so. Parties are encouraged to seek consents to the maximum extent practicable.

(9) The Clerk of the Commission is directed to maintain under seal all documents, materials, and information filed with the Commission in this proceeding that the producing party has designated as Confidential Information until further order of the Commission.

(10) A producing party is obligated to separate to the fullest extent practicable non-confidential documents, materials, and information from Confidential Information and to provide the non-confidential documents, materials, and information without restriction.

(11) To the extent that a party contends that it should not produce certain items of information because the terms of this Order do not provide sufficient protection to prevent harm to the producing party, the party may file a motion with the Commission requesting additional protective treatment. The producing party has the burden to demonstrate to the satisfaction of the Commission that this Order does not provide the information sufficient protection and that the proposed restrictions are necessary.

(a) The party seeking additional protection shall file all information for which it seeks additional protection under seal with the Commission. The party shall also file with the Commission a redacted version of all documents that contain the Confidential Information subject to the motion.

(b) The motion shall: (1) Describe each document and all information for which additional protection is sought, such description to include the character and contents of each document and all information; (2) Explain in detail for each document and all information why the confidential treatment afforded under this Order is not sufficient to protect the producing party's interests; (3) Describe and explain in detail all harm that might be suffered if the information is not afforded the higher protection; and (4) Explain its proposed additional restrictions and why such restrictions are the minimum necessary to protect the party.

(c) Within ten (10) business days of the filing of the motion, Staff and any party may file a response to the motion.

(d) Within five (5) business days of the filing of any response, the producing party may file a reply.

(12) In the event Staff or any party seeks to introduce at a hearing testimony, exhibits, or studies that disclose Confidential Information, Staff or the party seeking such introduction shall:

(a) Notify the producing party at least three (3) days in advance of any such hearing regarding testimony that is not prefiled unless a shorter period would not unduly prejudice the producing party or is necessitated by the circumstances;

(b) If such testimony is prefiled, file unredacted copies of testimony, exhibits or studies with the Commission under seal pursuant to Rule 5 VAC 5-20-170, and also file with the Commission redacted copies of all such information, and serve on all parties of record redacted copies of the testimony, exhibits, or studies deleting those parts that contain references to or portions of the designated Confidential Information. The testimony, exhibits, or studies containing the Confidential Information filed with the Commission shall be kept under seal unless and until the Commission rules to the contrary. Each party that has signed Attachment A hereof shall receive an unredacted copy of the testimony, exhibits, or studies that contain references to or portions of the Confidential Information.

(13) Oral testimony regarding Confidential Information, if ruled admissible by the Commission, will be taken in camera and that portion of the transcript recording such testimony shall be placed in the record under seal.

(14) No person authorized under this Protective Order to have access to Confidential Information shall disseminate, communicate, or reveal any such Confidential Information to any



person not specifically authorized under this Order or subsequent order or ruling by the Commission to have access.

(15) At the conclusion of this proceeding (including any appeals), any originals or reproductions of any Confidential Information produced pursuant to this Order shall, if requested to do so by the producing party, be returned to the producing party or destroyed. At such time, any originals or reproductions of any Confidential Information in Staff's possession will be returned to the producing party, destroyed or kept with Staff's permanent work papers in a manner that will preserve the confidentiality of the Confidential Information. Insofar as the provisions of this Order restrict the communications and use of the Confidential Information produced thereunder, such restrictions shall continue to be binding after the conclusion of this proceeding (including any appeals) as to the Confidential Information.

(16) Any party who obtains Confidential Information and thereafter misuses it in any way shall be subject to sanctions as the Commission may deem appropriate, in addition to any other liabilities that might attach from such misuse.

(17) This case is continued generally.

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## STATE CORPORATION COMMISSION

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To revise its fuel factor pursuant to	)	
Va. Code §56-249.6	)	

**AGREEMENT TO ADHERE TO PROTECTIVE ORDER**

I, \_\_\_\_\_, on behalf of and representing \_\_\_\_\_, hereby acknowledge having read and understood the terms of the Protective Order entered in this proceeding by the Commission on \_\_\_\_\_, 2002, and agree to treat all Confidential Information that I receive in connection with this Case No. PUE-2002-00377 as set forth in that Protective Order.

Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

On behalf of: \_\_\_\_\_